

**HEALTH COMMITTEE
of the
SUFFOLK COUNTY LEGISLATURE**

Minutes

A regular meeting of the Social Services Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York on **May 24, 2001**.

Members Present:

Legislator Ginny Fields - Chairperson
Legislator Brian Foley - Vice-Chairman
Legislator Maxine Postal
Legislator Martin Haley

Also In Attendance:

Paul Sabatino - Counsel to the Legislature
Mary Skiber - Aide to Legislator Fields
Cheryl Felice - AME
Madelaine Feindt - AME
Michael Monaghan - SCDPW
James Alipo - Safety
Bonnie Godsman - County Executive's Office
Bernard Kirschbaum - MHA
Ann Marie Carbonetto - Health Department
Eugene Durney - Health Department
Marilyn Shellabarger - Health Center
Chris Reimann - Aide to Presiding Officer Tonna
Commissioner Clare Bradley - Health Department
Bob Garfinkle - County Attorney's Office

Minutes Taken By:

Donna Barrett - Court Stenographer

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(*The meeting was called to order at 10:15 A.M.*)

CHAIRPERSON FIELDS:

I think we'll begin, and maybe we'll we begin with the Pledge of Allegiance led by Commissioner Clare Bradley.

SALUTATION

CHAIRPERSON FIELDS:

We have one card this morning. Cheryl Felice from AME. Come on up.

MS. FELICE:

Good morning. Thank you for inviting us. My card also has the name

of Madelaine Feindt in it as well. Again, my name is Cheryl Felice, I'm the Executive Vice President for AME.

CHAIRPERSON FIELDS:

I apologize. It does say Madelaine Feindt here too.

MS. FELICE:

I apologize that the President couldn't be here today, she had a previous commitment. But I'm here to introduce Madelaine to you . Madelaine is the Health and Safety Officer for AME, and we'll speak to you on the issues at the Touro Center.

MS. FEINDT:

Good morning, Legislators. Thank you for giving me this opportunity to speak. My name is Madelaine Feindt, Third Vice President and Health Safety Officer of Suffolk County Association of Municipal Employees. I'm here today representing Phyllis Garbarino, President and the concerns of AME members from the Health and Police Departments who work in the Bay Shore Mini Center. AME members, who have worked in this building for the last two years have experienced adverse health affects and discomfort from the poor inner air quality, improper ventilation, and lack of cooling within the Bay Shore Mini Center.

To date, 19 workers' compensation from County workers claims have been submitted to Risk Management as well as the numerous complaints from the client population served by the Health Department. Symptoms attributed to the poor inner air quality in these worker compensation claims include burning eyes and nasal passages, light headedness, body rashes, headache, sore throat, severe itching, nausea, chest discomfort, difficulty breathing, and rapid heart beat. These acute and chronic symptoms have caused loss work days, lower productivity, and lowered morale. All of these conditions would be alleviated if Touro, the landlord of the building, would act responsibly to operate and maintain the HVAC System to provide adequate air quality expected to protect the occupants from these documented adverse health affects.

The AME members and the Health Department, as well the Police Department's Highway Patrol, have endured the unacceptable conditions for far to long. We require HVAC balancing of the entire building including Highway Patrol, Family Planning, WIC, STD, and the health center. We must be assured that all the thermostats and related mechanical devices, such as the VAVs, are in working order and

sufficiently sized to serve the HVAC needs of the building. The system must remain operating while County workers are in the building,

generally until midnight in Highway Patrol. All of these AME members serve the health and safety needs of the community at large. Their own health and safety must be safeguarded at their work place from these recognized hazards. Thank you.

CHAIRPERSON FIELDS:

Do you know offhand whether or not the Police Department has compensation cases, or is their complaint that the heat is not -- or the air conditioning is not on?

(Legislator Foley enters at 10:20 A.M.)

MS. FEINDT:

I don't believe from AME members are any workers' comp claims. From Highway Patrol, and their main complaint is the lack of AC.

CHAIRPERSON FIELDS:

Air. Okay. Thank you very much.

MS. FEINDT:

Thank you.

CHAIRPERSON FIELDS:

Thank you. I guess -- I don't know whether I should ask Dr. Bradley or -- is Bob Garfinkle here?

LEG. FOLEY:

He's outside. Thank you.

CHAIRPERSON FIELDS:

Thank you.

LEG. POSTAL:

While we're waiting for him, may I?

CHAIRPERSON FIELDS:

You certainly may.

LEG. POSTAL:

After our special Health Committee meeting on this issue last week, I had a call from someone at Touro who called me and represented that the lease on the building was as is and that the County was responsible for everything on the County side of the building. So I got a copy of the lease, which I have with me by the way, and, yes, the building was as is, but in reading the lease, just is to clarify it, the landlord, which is Touro, is responsible for all structural repairs and all repairs to the outside of the building. I checked, because I wasn't sure. The HVAC system is considered a structural repair. That's what I was told, legally.

LEG. HALEY:

No.

LEG. POSTAL:

No. Well, I think that's one of the questions we can ask Mr. Garfinkle.

LEG. HALEY:

My experience is pretty simple. If an HVAC unit is repairable -- in this particular instance, it would be the tenant -- if it is irreparable, then it would be the landlord. That's the difference. But the normal maintenance, VAV valves and all of those other things, I would imagine -- I haven't reviewed that -- but I would imagine might still be our responsibility.

LEG. POSTAL:

Madam Chair, if I could just respond.

CHAIRPERSON FIELDS:

Can I just also ask, he missed me calling for him, but Bob, can you come up to the front for us, please? Okay. Thanks.

CHAIRPERSON FIELDS:

Bob, I was just saying that I have a copy of the lease between Touro and the County regarding the Mini Center because I had had a call after our last Health Committee meeting, and the person -- from Touro -- and the person who called me represented that the County was responsible for some of the things that we were saying Touro was responsible for as the landlord. One of the things -- I get a copy of the lease -- and I read the lease. And one of the things in the lease -- one of the points in the lease is that the landlord is responsible for all structural repairs. And we were just discussing that issue because it was my understanding from the last committee meeting that the HVAC system was replaced and needed replacing.

So it wasn't just valves, it was an HVAC system. That's why I wanted to clarify it. I wasn't clear when I said what I said, Marty. So, you know, we were kind of talking across purposes. But, you know, it seems to me that it's very clear that the replacement of the HVAC system is a structural repair and that the landlord was responsible and is responsible for that. There are also provisions having to do with providing the tenant access to all different parts of the building in this, because that was an issue too, whether the County was actually provided access to parts of the building in terms of doing inspections and trying to investigate and address the problem. The other issue --

LEG. FIELDS:

Can I ask --

LEG. POSTAL:

Yes.

CHAIRPERSON FIELDS:

When you talk about access, does it say that they have to provide 24 or 48 hour notice or -- are you familiar with the lease?

MR. GARFINKLE:

I believe -- I don't have it in front of me, but I believe, other than

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actual emergency situations, it's upon reasonable notice that they have to open up areas, they may want to provide someone to walk around with them, but generally --

CHAIRPERSON FIELDS:

What does reasonable mean?

MR. GARFINKLE:

Reasonable means if it's a situation that comes up, you know, 24 hours -- it depends on the circumstances.

CHAIRPERSON FIELDS:

That's what I'm asking. In other words, they testified the last time didn't want to let us in because they had not been given 48 hours notice or something to that effect, and I'm just wondering --

MR. GARFINKLE:

I don't remember whether there is a 48 hour provision in there, but I believe it's reasonable. It's in the -- I don't have the lease in front of me, and I apologize.

CHAIRPERSON FIELDS:

But that's was reasonable means, 24 to 48 hours?

MR. GARFINKLE:

Under the circumstances. If there's no one available on a Friday, for example, and it's not a critical matter, obviously, it would be more than 48, it would be Monday, the next business day upon the notice.

CHAIRPERSON FIELDS:

I'm sorry to interrupt.

LEG. POSTAL:

That's all right. I'm just -- I'm looking through, and I'm going to try to find that portion of the lease. But the other thing that I wanted to point out, we had a copy, as I recall, of a letter from Touro that indicated that in terms of providing -- keeping the HVAC system running during the hours that Touro was not there. I think I saw a letter last time that stated that the County would have to agree to pay all costs, all utility costs, after 5:30 P. M. And in the lease, it does address the issue of utilities.

It says that "unless tenant, at its own cost and expense, install separate meters, tenant shall pay the landlord within 30 days of receipt of landlord's statement, an amount equal to the tenant's

proportionate share of all utilities servicing the building. As used herein, tenant's proportionate share shall be defined as one-third of the face amount of the bills received by landlord from the utilities, including but not limited to water, electricity, gas and/or oil".

There is no place in this lease where it limits the hours of operation within the building. So, you know, I'm not a lawyer, but it seems to me that there's no place where the tenant is limited to only having use of the building and being responsible for a third of the utilities for certain hours. It's just a blanket statement. The tenant is responsible for one-third of the cost of utilities. So I just wanted

to make that clear, and I will look through the lease for any place where it clarifies access.

CHAIRPERSON FIELDS:
Legislator Haley.

LEG. HALEY:

Madam Chair, I'm not sure why -- exactly why Mr. Garfinkle's here today, I'm sure we'll find out shortly, but I think Legislator Postal's talking about some of the typical problems we've had in the past with compliance, landlord/tenant problems, and we have Compliance Officers now in DPW. So it seems to me that that's a direction we should be at. Someone from the Compliance and DPW should be reviewing that lease, ascertaining whether it's our problem, their problem. Sounds all familiar, right? And then obviously, when we've ascertained whose problems it is based on a recommendation from Compliance, we should be discussing the same with the County Attorney.

CHAIRPERSON FIELDS:

We went -- at our emergency meeting, we reviewed all of -- we didn't review, actually, the lease. And that's information I think, that's new to us, but it is also contrary to what Touro stated on the record when they appeared here last week. Mr. Garfinkle is here because he offered to give us a daily update from last Thursday to present day of exactly what Touro was going to be doing and what the County was going to be doing. So our aim really is to try to get our patients back into the building as rapidly as we can and our employees back working. So Mr. Garfinkle, maybe you could give us that update.

MR. GARFINKLE:

We had the emergency meeting on May 16th. After the meeting, I had spoken with Touro, and, number one, we discussed of having a joint walk-through of the premises, which my impression at the time was that it would be of the whole building. It turned out that it was just through the County portion, but I don't think materially that at this

point it matters. What was discussed in my conversation was two major areas of concern; one, which involved directly the HVAC system, the balancing, and the hours of operation, and two, what we were calling it's air quality problems. And Touro felt that based on their prior analysis, what may solve the air quality problems would be venting of the County side.

Touro had indicated that without discussing any liability under the lease, and we both agreed that all our conversations had nothing to do with the legal obligations towards solving the problem, that assuming that it wasn't going to be a major financial cost item, which they didn't believe it to be, that they would actually be inclined to do the venting, as well as to do the balancing of the HVAC system and increase the hours of operation to accommodate the County's needs. And Legislator Postal, and again, I don't want to, in an open session, discuss the legal strategy or the legal position of the County, but what Legislator Postal read was the same section that I had referred to and had read to Touro with respect to the hours of operation.

On Thursday, the next day, Touro had requested mechanical -- the mechanical drawings for our side with respect to the venting. In

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speaking with DPW, I think there may have been a breakdown in communications. We had sent out the mechanical to Touro. I believe Touro felt that we were also sending copies to their engineer, which we didn't. When we became aware that they didn't have copies of them, we then sent out the mechanicals to their engineer. And that was on Thursday. On Friday, we had scheduled, with Touro, a walk-through for the following Monday, the 19th. And of a report that Touro had sent over to our office, we had forwarded to Health, indicating that their conclusion was, at least substantially, the mechanicals on their -- the mechanical operation of the hard core equipment, the HVAC system, was designed and operating according to their specifications. In their walk-through, they had found that there might be a need for venting --

CHAIRPERSON FIELDS:

Can I -- I'm just not clear on what you just said. You just made a statement that the air conditioning was working correctly?

MR. GARFINKLE:

Subject to balancing.

CHAIRPERSON FIELDS:

Working where correctly?

MR. GARFINKLE:

That the physical installation of the air conditioning system, the size of the air conditioning system was properly designed. It had not yet, obviously, been balanced, so that to the extent is to proper quantities of air coming in, that issue was not addressed. But as far as the physical equipment itself, it was of the proper design, it was properly installed, and capable of functioning properly.

CHAIRPERSON FIELDS:
On the County side?

MR. GARFINKLE:
Not on the County side --

CHAIRPERSON FIELDS:
All over.

MR. GARFINKLE:
Generally for the whole building.

CHAIRPERSON FIELDS:
Okay.

LEG. HALEY:
Madam Chair.

MR. GARFINKLE:
And again, it had not yet been balanced so that there would not be the sufficient air quantity coming into the County side. I don't think that was -- it was just the physical design wasn't capable of doing what it was designed to do. Additionally --

CHAIRPERSON FIELDS:
Legislator Haley, you have a question?

LEG. HALEY:
Bob, before you continue, did you have representatives from DPW with you when you did all of this?

MR. GARFINKLE:
DPW went through the walk-through, I believe, on Monday. In my conversations, DPW is not present. When you say was DPW present at the walk-through, they were.

LEG. HALEY:
Well, you know, we just went through an entire problem with Coram, and we've talked about the problem with landlord/tenant relations, we've talked about the problems with Compliance, they came up with a plan,

with a lot of pressure from this Legislature, to deal with compliance problems, and yet, you know, I don't think you or I are uniquely qualified to ascertain whether or not the HVAC system is sufficient or insufficient. And I appreciate your participation from a negotiating perspective in trying to resolve the problem, but it seems to me that, first and foremost, is DPW ascertaining, because there's where the expertise is, they have a Compliance Office, we set it up that way, ascertaining whether or not the building HVAC system is operable.

If it's not operating properly, who's going to have the responsibility -- and that's -- the responsibility will be then be the conversation between DPW and the County Attorney's Office and then thereafter we go to Touro and say this is the problem, this is the responsibility, this is the fix. Okay. And at that point you do your negotiating or whatever. But I'm just afraid that we're going to spend -- will be spinning our wheels because we may have left some people out of the loop.

CHAIRPERSON FIELDS:

Legislator Haley, let me just interject one thing. One problem I think that we came out of the emergency meeting about was that whenever DPW or anyone in the County tried to negotiate -- not even negotiate, discuss the difficulties that they were having in the Health Center, Touro was completely uncooperative. So that's where the County Executive's Counsel has come in to make them more accountable and give us a blow-by-blow description of where we are to get us back in there as rapidly we can.

LEG. HALEY:

But, you know --

MR. GARFINKLE:

My understanding --

LEG. HALEY:

We're applying a different set of rules to this situation then we were at Coram. It's really simple.

CHAIRPERSON FIELDS:

That's because the building is closed and Coram --

LEG. HALEY:

I know it's closed, but the fact of the matter is DPW should be able to put in writing the problems for that particular building and what has to be complied with --

CHAIRPERSON FIELDS:

They did.

LEG. HALEY:

-- as quickly as possible. And from that point forward it becomes a legal landlord/tenant issue.

CHAIRPERSON FIELDS:

They did. The letter was written a year ago maybe.

MR. GARFINKLE:

I don't know. There was actually two letters written. At some point, after much -- after a confrontation actually, DPW was granted access to the Touro side of the building. And they had made an evaluation, and I believe --

LEG. HALEY:

Could you expand on what -- define confrontation.

MR. GARFINKLE:

I believe that there was a health problem over there throughout the whole building, and we demanded that we get to the County side, and they finally let us in.

LEG. HALEY:

And this is a point at which we may have to do Executive Session because I'm very, very much concerned about this. And why, when we've, again, defined several months ago, how we were going to approach these problems in the buildings that we lease. This is another one that seems to have slipped through the cracks.

CHAIRPERSON FIELDS:

Why don't you finish your report, and maybe we can give Legislator Haley an update of the whole meeting that we had last week.

MR. GARFINKLE:

My understanding was that on Monday there was a walk-through of the facility, and based upon the mechanicals being received by their engineering consultant, that there were still -- they that still believed that part of the air quality problems which would be resolved by the venting. And I'm not an engineer, and I'm not sure whether they mean -- what form of venting they mean.

A letter was sent by Touro to DPW from the Vice President of Operations, Akiva Kobre, who was here last week. And in that letter he had said that the County -- that Touro was going to do the balancing measurements, and that it was the County's responsibility for balancing other than the measurements. A concern was raised by the County as to -- we were -- I was under the understanding after discussions with Touro that, in fact, they would do not only the balancing measurements but what we thought of the as the balancing,

and we were concerned that there was a change in the representations being made by Touro.

About 10 minutes ago, I just got off the phone with Akiva Kobre, who was at a meeting with the president of the college. And what Mr. Kobre indicated to me was from his definitional term, the balancing measurements includes -- and they're hiring someone who's going through the building now on the County side at a cost of, from what he represented, \$7000 -- that they had to do the balancing measurements, they would take the balancing measurements, and to the extent that the equipment, as designed, the air conditioning system, the HVAC system, they would make whatever adjustments are necessary to the County side to get the proper air flow. What Mr. Kobre said he meant, and DPW is going to confirm it in writing in response to the letter, was that to the extent that any work had to be done on the existing system, Touro would do it, if additional duct work was needed, that -- being on the county side and under their interpretation of the lease, that would be the County's responsibility.

From a negotiating point of view and in trying to solve the problem, it was indicated that, again, if it was not a major item, they might be inclined to do that also. DPW can describe whether that's a reasonable interpretation as to what we meant by balancing, that it would or would not include duct work, that's, again, an engineering question for DPW. But the letter was not as offensive as I think first thought of, that they were not reneging on the representations that they made to us. And as we sit here, I believe, as I said, they're doing the balancing -- the balancing measurements and making whatever adjustments to the County side as would be needed under the existing system of the HVAC system. And DPW's mailing of the mechanicals directly to the -- to Touro's engineer should be in their possession by now, or if not, then today, to make the recommendations and evaluation for the venting system. And that's where we are.

CHAIRPERSON FIELDS:

DPW is here, can we get you to respond to some of the questions that we have?

MR. MONAGHAN:

Good morning. I'm Mike Monaghan from the Public Works Department.

CHAIRPERSON FIELDS:

Good morning. Do you have anything different to offer to us to let us know where we're at from DPW's standpoint?

MR. MONAGHAN:

Certainly. Let me give you my perspective. Monday morning I attended a walk-through with representatives of the Health Department, Touro College and an engineering consultant, I guess, David {Goldstein} from Controlled Energy Systems.

CHAIRPERSON FIELDS:

So then the answer to the question of the walk-through of DPW being there, DPW was there.

MR. MONAGHAN:
That's correct.

CHAIRPERSON FIELDS:
Thank you.

MR. MONAGHAN:
We performed a walk-through of the County side of the Health Center, first and second floors, basically, looked in all the different rooms, opened up any locked doors, and gave the consultant an opportunity to take a look around. Also present, was a representative from Anson Environmental Group. Basically, we walked around the entire Health Center taking some notes. At that point, I believe Touro College had received all of the drawings I had sent them. And the consultant had not received any drawings, which we're in the process of mailing out to him now, but certainly, Touro College has them in their possession right now.

It's also my understanding that the air balancer is there right now starting to make adjustments to the HVAC system. As part of that, they will be take measurements of air flow and making any minor adjustments necessary with some manual dampers up in the ceiling. Typically what happens with a balancing report like that, they'll go around, take some preliminary measurements. If they know of any deficiencies that need corrective action, for example, a piece of duct work that's not there or that missing they'll note that in their preliminary report, forward that to us, and we will have to make corrective action upon that.

CHAIRPERSON FIELDS:
Does anyone have any idea how long this whole produce is going to take? Does anyone predict that this might be a week or two or a month that we would be able to go back into the building if these adjustments are made and they seem to correct the problem?

MR. MONAGHAN:
Assuming that they are no major modifications necessary of a capital nature, to be able to balance the system should take no more than three or four days of the size -- of an office that size.

CHAIRPERSON FIELDS:
And the preliminary report was that the system was large enough to accommodate it, and it should work correctly if, possibly, it's balanced correctly.

MR. MONAGHAN:
Well' I didn't receive any copy of any kind of preliminary report yet.

I'm not sure what Mr. Garfinkle was referring to with regard to the equipment. We didn't actually look at air handlers.

CHAIRPERSON FIELDS:
Who did do that, Bob?

MR. GARFINKLE:
Originally, it was done by Touro. When we were at this meeting last week --

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CHAIRPERSON FIELDS:
You have to use the mike.

MR. GARFINKLE:
I believe that was done by Touro. When we were at the meeting last week, it was my understanding that the walk-through would be of the entire facility. For some reason something got lost in the translation, and the tour was just of the County side. But we were here, Mr. Kobre was here, representatives of the Health Department -- what I was talking about, and I think the record reflects -- it was a walk-through of the entire building.

LEG. FOLEY:
That's right.

LEG. FIELDS:
That's correct. We all remember that.

MR. GARFINKLE:
It's conceivable that that would have to be followed up if, in fact, there's a dispute as to what's -- whether or not what needs to be done on the County side would be sufficient. So -- but that's why I said, it may or may not be a problem. It certainly would have been alleviated if there was a complete walk-through, but we'll have to see what their balancing report says, coupled with what the mechanical showed that maybe required for the additional venting. But it may not be a -- it may not be a problem where we need to do another walk-through or a walk-through of the County -- of the non-County side.

CHAIRPERSON FIELDS:
Can you possibly make sure, in a letter, that before we even -- you know, once they have done the balancing, that we would require that we walk-through the whole building so that that's not going to keep going off and off and there isn't something lost in the translation. As far -- it's my -- I believe that -- I think everyone who was at the meeting remembers that they said it would be through the whole

building. So I don't know why that wouldn't have been accomplished. Okay. Legislator Foley.

LEG. FOLEY:

Just to follow up on that point. Mr. Garfinkle -- just to follow up on that point, where the walk-through was only in the County portion, did they state why they were once again reluctant to have you walk through the other areas that, through the testimony at the emergency meeting, testimony was given to the fact that it was the belief of some of the County that the problems were emanating from the Touro side, particularly the autopsy room. So why was there -- why is there this continued reluctance to go through the other parts of the building?

MR. GARFINKLE:

I wasn't there. I don't know whether it was reluctance or just a misunderstanding. I don't know, I wasn't there.

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LEG. FOLEY:

Can we hear from Public Works, please?

MR. MONAGHAN:

Legislator Foley, I think it was probably just a misunderstanding. I was unaware of, actually, the purpose of the entire meeting and the walk-through on Monday morning. We simply asked them what they needed to see -- or what they wanted to see on our side, and we'd let them in to all the areas.

LEG. FOLEY:

Okay. Do you still feel there's a need, as a tenant in the building, for you to have access to other parts of the building to adequately address the concerns of the center employees and clients?

MR. MONAGHAN:

I think from an engineering survey point of view, I think I've fully looked at Touro's side.

LEG. FOLEY:

Say that again.

MR. MONAGHAN:

I think I've looked at Touro's side already through --

LEG. FOLEY:

You have.

MR. MONAGHAN:

-- based in October, before I wrote my engineering report. And I think Mr. Hill has probably looked in certain areas as well. There might be a future need certainly to do that depending on the results of this balancing.

LEG. FOLEY:

Now, is the balancing going to -- this prescription that they're coming up for, for the County side, does that address all the issues that you had outlined in your report from last October 6th, where it talked about not only the ventilation and air quality, but also an issue with the hoods at the facility?

MR. MONAGHAN:

Well, the hoods were addressed during that renovation in approximately February of this year with the additional duct work on the roof top.

LEG. FOLEY:

Okay.

MR. MONAGHAN:

In terms of the hours of operation, that has yet to be addressed.

LEG. FOLEY:

Okay.

MR. MONAGHAN:

In addition, the amount of fresh air percentage has yet to be

addressed.

LEG. FOLEY:

Has yet to be addressed? That's -- so the balancing does not take into account bringing more fresh air into the -- into the County side of the building?

MR. MONAGHAN:

Not this portion of the balancing, no.

LEG. FOLEY:

Well, all right. That was one of the major discussion points, Madam Chair, at our last meeting. Was that brought up again on Monday about the need not only to balance, but the need to bring in more fresh air into that particular -- into that portion of the building?

MR. MONAGHAN:

No, it was not.

LEG. FOLEY:

And why wasn't it brought up at that time?

MR. MONAGHAN:

I'm not sure of -- actually, I'm not sure of the purpose of the meeting that we had on Monday. I was just told Monday morning to go out there and perform a walk-through with representatives of Touro College on our side of the building. I believe we tried to get in touch with Mr. Garfinkle to ascertain what the purpose of the whole meeting was, but we weren't able to --

LEG. FOLEY:

All right. Now, the blueprints that you're submitting to their engineering firm, is that just -- give us a rundown of those engineering plans.

MR. MONAGHAN:

Certainly. There would be two types of plans. There would be what's called design drawings, which were based on the actual design at the time the building was build and subsequent renovations from our side. I also have copies of Touro College's HVAC renovation plans which I'll be sending to that consultant as well just to keep the whole package --

LEG. FOLEY:

Does that include not only an improved balancing, but also, does those plans include bringing more fresh air into that part of the building?

MR. MONAGHAN:

Well, this -- the plans were at two-fold. One from the original design in the building in 1978. We just have the design and the as-built drawings for the condition of the duct work systems when it was operated. In addition, we have the plans from the 1998 renovations, which include a balancing report from the portions of the duct work that were modified.

LEG. FOLEY:

Okay. How have we broached -- my final question for the moment, I think we can speak about this publically, Counselor, how do we -- since only -- since only two-thirds of the issues were in essence discussed on Monday, while at least one-third had to do with the balancing, there was discussion from what you've said about what were ongoing negotiations about the hours of operation, but the final piece of the puzzle, which is very important to the employees there as well

as the clients, is how do we intends to require a follow-up with the landlord about the need for more fresh air, because that was one of the major points that was made in the emergency meeting?

CHAIRPERSON FIELDS:

Can I interrupt and ask you one other question? If there -- you said that there would be three or four days to do the balancing if there was no work of a capital nature. Since we don't own the building, we can't do a capital project for additional duct work or capital improvements, let's say. Then what?

MR. GARFINKLE:

I think that's a legal issue really as to whether you can do capital work or not. You can do capital work in a non-owned building, to go out and bond capital work. The period of probably the useful life of the property that you're installing has to be for the term of the lease or deducted in some way, counted for by the landlord for that excess period of time. But you certainly can do capital work in lease-hold premises. There's no prohibition against that from a legal point of view. It just comes to the issue --

CHAIRPERSON FIELDS:

From a financial points of view, though.

MR. GARFINKLE:

If it's substantial, and you're bonding it and then you have to work something out with the landlord as to -- either you've got the ability to remove it, or you have the ability to recoup it from the landlord, the nondepreciated value at the term of the lease, but that's more of a -- that has to do with its financing, if it's being financed.

CHAIRPERSON FIELDS:

Thank you. I'm sorry I interrupted.

LEG. FOLEY:

That's okay. Can someone please answer the question about the need for -- how we're going to bring in more -- additional fresh air into that part of the building.

MR. GARFINKLE:

I'm not an engineer, but one -- what was told to me and again, it was by Touro, and it's subject to DPW's ears, the issue of the air quantity maybe impacted and resolved through better venting of the system. So that if there was better venting, there may not be the need for the increasing of 10% fresh air inflow into the building.

LEG. FOLEY:

Could I here our resident expert from Public Works as to that point of

view of Touro that the venting is going -- actually it's venting out what's there. What about bringing in additional air?

MR. MONAGHAN:

Legislator Foley, it was my understanding that after the last meeting they would come back to us with some sort of proposal in one form or another for increasing the percentage of fresh air, and I have yet to hear anything on that.

LEG. FOLEY:

All right. So that -- that's my impression also. So Counsel, how are we going to impress upon -- on Touro to follow through on what they had stated to us at the committee meeting that they were going to look at the whole host of ways to improve the air quality there, not just to vent air, but to bring in additional fresh air. It seems to me, Madam Chair, they they're going to do this in an incremental fashion. They first want to see if this is going to work. And then as opposed to let's look at the whole picture and let's --

CHAIRPERSON FIELDS:

The reason for the emergency meeting last week was not to do this, not to wait three or four days and then another day and so forth. So can't we either take the minutes from the emergency meeting and follow up with what exactly was on the record that they promised that they would do in a timely matter and get it done, instead of, we'll walk through our portion of the building, then we'll go back, walk through the other one, let's see if this works, let's -- you know, I'm not understanding why we're not in a hurry to get back in that building.

MR. GARFINKLE:

In discussing with Mr. Monaghan, until the venting system is installed, assuming that that's what's required, we would not be able to know to what extent the air would have to be increased, if at all. So the two are interrelated to that extent. So that if we were, hypothetically, going to ask Touro to increase by 15 percent. That may or may not be enough, it maybe more than enough. We may not need that amount.

CHAIRPERSON FIELDS:

Legislator Haley then --

LEG. HALEY:

I still want to go back, Mr. Monaghan, who is our compliance officer in DPW for leases?

MR. MONAGHAN:

I'm not sure of that Mr. Haley.

LEG. HALEY:

Do you remember who that is? There is -- we have -- is it Jeff Martell?

MR. SABATINO:

Jeff Martell.

LEG. HALEY:

No. No. It was County-wide. What we were trying to do is we were trying to provide focus for all of these problems through one compliance officer.

LEG. FOLEY:

Mr. Monaghan, I think, is the engineer for --

CHAIRPERSON FIELDS:

Ann Marie, do you remember this?

COMMISSIONER BRADLEY:

Jeff Martell.

MR. SABATINO:

It was Jeff Martell. It was stated on the record. I recall because Legislator Haley -- the outgrowth of one of those meetings was to have a county -- new County-wide policy.

LEG. HALEY:

Yeah, a new policy. So what I'm trying to imagine here is that no what happens, if we don't have someone who's going to ascertain compliance, where are we going? We're going to wait three weeks, have them come back and say, yeah, it's okay. The landlord is going to tell us, yeah, it's okay, and, in fact, it's not. We have to be able to establish, and it may have to be at our expense, whether or not we are getting appropriate HVAC in that unit. And then our compliance officer, through help with those people in DPW, have to be able to ascertain that, go outside and get someone to help ascertain that, and then figure out whether or not there's compliance, and if there's not compliance, then we have a default situation.

And if we have a default situation, obviously, we may have to take legal actions. We're not even looking at that. We're over here negotiating, trying to be Mr. Nice Guy, in the meantime, no one's in that building. Right now, you're looking at Coram, we've made a big stink about Coram, but guess what? We're tenanted, we're still using the building, we have water, we lost water for a couple of days. And we're ready to take that landlord out and hang him. But here we have a landlord -- okay -- we're depending upon him to ascertain whether or not he's complying with the lease. That's our function. We went through a big stink about Coram, and there was a major modification in policy and approach to dealing with landlord/tenants in the form of a compliance officer, and I don't think he was -- he wasn't at your emergency meeting, and he wasn't at this meeting.

So Mr. Monaghan, you can't tell me, and I don't want to pick on you, you can't really tell me. You're dependant upon some view by some outside group being hired by a landlord. We have to be able to

ascertain that, and ascertain that fast, whether it's here or any other place.

CHAIRPERSON FIELDS:

Does anyone now whether Mr. Martell has been involved in this whole -- County Executive's Office, do you know whether Mr. Martell's --

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MS. GODSMAN:

No, I don't.

CHAIRPERSON FIELDS:

No one knows.

LEG. HALEY:

One of the things that I've always been very concerned about is sitting and spending a lot of time going through these machinations as to whether or not people are in compliance or not in compliance. And the outgrowth of that was the fact that we finally had someone who was going to provide the focus necessary so we could deal with landlord/tenant problems. It's real simple.

DPW has the expertise and can go out and ascertain whether or not HVAC is appropriate. Everything flows through the compliance officer, if it doesn't appear that things are in compliance, that compliance officer talks to a County Attorney, and we deal with it. If you follow that process, then we're not going to spend weeks sitting here trying to micromanage each and everything that you do. The Executive side set up a policy, we made a big stink about it, and nobody's doing anything.

Now, I think that we need to, as quickly as possibly, get a compliance officer to look at this and to answer the simple question; how is DPW going to ascertain that the HVAC system and the venting is appropriate? Are they going to take the word of the landlord and those people that create that report? And the question is why do we have to wait as long as we do? We're in an emergency situation here. We're not in a simple situation. Everybody's dragging their feet simply because you haven't brought it back to a focal point, which is the compliance officer.

CHAIRPERSON FIELDS:

We agree.

MR. GARFINKLE:

I think we're all in agreement, Legislator Haley. Just -- one of the discussions as to, for example, the balancing is approximately is

five, six, \$7000 ticket item. Through the discussions, through the emergency meeting of the -- this committee, Touro is now undertaking an approximately, from what they're representing, five, six, \$7000 financial incurrence to have that system, in fact, balanced. If we went out and hired our own balancer, it would cost us five -- four, five, six, \$7000.

CHAIRPERSON FIELDS:

But we're losing money in that building to begin with, and I'll bet you it's a lot more than that.

MR. GARFINKLE:

Excuse me?

CHAIRPERSON FIELDS:

We're losing money now by not occupying that building.

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MR. GARFINKLE:

Unquestionably we are.

CHAIRPERSON FIELDS:

So I don't think that that even is something that -- I think that Legislator Haley is absolutely correct. And I think we're dancing around not to, you know, make an enemy of Touro. But we stated on the record we wanted them to cooperate, they said they would cooperate. And now we really have to make them. And Legislator Haley is absolutely right.

We went through this adnauseam with Coram to try to find someone who would be accountable in the County for major problems that we seem to find with all of these leases. And we now set that standard, and we even asked for a copy of how the County Executive's Office was going to deal with leases and compliance and so forth. And now, what we're seeing is we're not following the standard, we're not following the way they that we had suggested that we were going to start from this point forward in dealing with our leases.

So I think at this point maybe we could get Mr. Martell to get involved in this in a very aggressive way, and I think the word aggressive here is extremely important. I think we are not being as aggressive as we should be under the circumstances. We do have a major emergency here. And just quickly from AME, I know that they mentioned that there were 12 people that had workers' compensation cases, was that above and beyond the 43 cases Southside Hospital said that they had?

MS. FEINDT:
Yes.

CHAIRPERSON FIELDS:

So we have 43 plus 12. That's a lot of people to have a Health Center that is making people sick. And why we are twiddling our thumbs. I mean I know you may feel that you're not, but it looks that way from my standpoint, from the patients who, by the way, in a Health Center, it's difficult to have compliance from your patients. We have a situation where they do go to the Health Center. Now, we've been calling them and saying, well, we can't get you into the Health Center in Bay Shore, come on over to Brentwood or Patchogue, and they're not going.

So we have people who are ill, and they're not complying because they don't have the building, and we're just -- okay, let's see this and let's see that. I would like very much to hear from Mr. Martell and hear that everyone is working, the counsel, DPW, the Health Department, the, you know, everybody working together in a very, very aggressive manner so that we can -- you can come back and say, okay, on such and such a date, we plan on being in there. And I believe that you can probably figure that out if your -- if the compliance officer, I guess is what we're calling him, is in charge of the whole thing and knows all of the components to this.

LEG. HALEY:

Madam Chair. I really think that at some point we have to consider

Executive Session either here or perhaps on Tuesday, because you have -- you have what could be substantial liability questions and at this particular junction, we're dependant upon the landlord to ascertain the problems there. And in absence of us doing the same homework and maybe even the duplicating the reports, at some point in time when we're all before the judge being sued, landlord, tenants, everybody's going to be named in some sort of suit down the line.

It seems to me that we're in a position of weakness because we haven't even thought about doing our homework appropriately to make sure that the liability is extended to the landlord as opposed to being extended to the County. And I think all of those are very sensitive issues. And I think from a management perspective, we failed in this regard miserably. And I would suggest that some conversations be had quite quickly with the County Attorney's side, DPW compliance, and with our counsel to ascertaining whether we should even continue at discussing the same.

CHAIRPERSON FIELDS:

Mr. Garfinkle, I would suggest at this point that we do have an Executive Session on Tuesday just do give us an update so that we know that, you know, we're --

MR. GARFINKLE:

At the General Meeting, you would like to go into Executive Session?

LEG. FIELDS:

June 5th.

LEG. FOLEY:

What we could do, Madam Chair --

CHAIRPERSON FIELDS:

If we're not in the building before then.

LEG. FOLEY:

What we could do, just because of the emergency of the situation, is next weeks Health Committee Capital Budget Meeting, we could have an update at that particular meeting as well, by the way, that's next Tuesday or next Wednesday.

COMMISSIONER BRADLEY:

It's June 1st.

CHAIRPERSON FIELDS:

June 1st. I actually don't really want to say let's wait until June 5th, because I have a feeling if I say let's wait until June 5th, we're going to wait until June 5th. I really don't want to do that. I'd like to see us in there now. So, you know, just -- if we could at least or maybe even get a phone call to me within the next couple of days and then I will discuss it with the Health Committee.

LEG. FOLEY:

We could also have them come back at the June 1st Health Committee Capital Budget Meeting to give us an update.

CHAIRPERSON FIELDS:

Legislator Haley.

LEG. HALEY:

I have a question. Mr. Monaghan, where are the HVAC units located? Are they located physically on the landlord's portion of the building?

MR. MONAGHAN:

That is correct, Legislator Haley. They're located in the penthouse mechanical rooms.

LEG. HALEY:

In the penthouse mechanical rooms, right? So I'm just trying to see from a repair perspective -- we share that HVAC with other tenants?

MR. MONAGHAN:

That's correct. There are some common air-handling systems which serve both Touro's and the County's portion.

LEG. HALEY:

So it would be inappropriate, I think, to say that the tenant, the County in this particular instance, might be responsible for the repair of those actual HVAC units. The only thing we would be responsible for would be perhaps, some air handlers in our demised premises, right?

MR. MONAGHAN:

I think my understanding would be that if there was any problem with the actual duct work in our portion of the building, we'd be responsible for replacing it. If there was a problem with the air-handling unit itself, the motor, the fan, anything up to our rented space, they would be responsible for repairing that. But, again, I'm not familiar with the lease, so --

LEG. HALEY:

Yeah, that seems pretty obvious. And have we done air quality tests ourselves?

MR. MONAGHAN:

I believe the Health Department has done that.

LEG. HALEY:

Have done air quality. I think -- you know what? I think we should have an Executive Session as quickly as possible.

CHAIRPERSON FIELDS:

I've just been informed that the meeting that we have -- Capital Meeting is Tuesday, May 29th, at 11:30, so I would ask that the Health Committee be there so that we can have -- with the Health Department -- you know, an update of where we are with maybe even Executive Session.

MR. GARFINKLE:

What time on the 29th?

11:30 on the 29th, which is Tuesday. Public Works should be there. Maybe we'll send out of a letter. You know, I just hate that we tend to do meetings without everybody, and I would like to see that we don't have to say, oh, well, I have to talk to so and so, or I have to talk to so and so. So Ted should be there also.

LEG. HALEY:

We'd like the compliance officers and representation of the County Attorney.

CHAIRPERSON FIELDS:

Jeff Martell, Tedd Godek, compliance officer. Ann Marie? All right. Whoever it takes. If it takes 25 people to put this together, this is an emergency, and I can't stress that enough. We're in a crisis situation and when -- just when I hear myself say that we have a health facility that's making people sick, it's an oxymoron, it's ridiculous. Okay. Thank you. Marilyn Shellabarger.

MS. SHELLABARGER:

I don't think I'll speak at this time.

CHAIRPERSON FIELDS:

Thank you. Okay. Why don't we beginning the agenda?

CHAIRPERSON FIELDS:

Dr. Bradley, could you come on up, please. Legislator Foley.

LEG. FOLEY:

Thank you. We heard a few moments ago, Commissioner, about the loss of -- not only a loss of service to clients, but there is also a concomitant loss of revenues to the Health Department because of our -- because of the evacuation from this sick building. That being the case, I think it would be helpful to this committee and constructive to this committee if you could have someone on your staff be able to keep a running log, if you will, of just what kind of loss of revenues we will be incurring because I think that will have to be part of our Executive Session discussions with our attorney. Okay?

COMMISSIONER BRADLEY:

Okay.

LEG. FIELDS:

Legislator Postal.

LEG. POSTAL:

Thank you. Dr. Bradley, yesterday in the -- I think it is. Yesterday in the Finance Committee, Introductory Resolution, which was prime in that committee, 1487, which is implementing budget cuts for equipment supplies, travel, special services, and fees for services to partially offset sales and compensating use tax increase without property tax increase was tabled. But it's obviously pending, and my question in the committee had to do with fees that we pay for consulting fees or fees for service that we pay to people in the Health Department, for example, are there physicians that we -- who are not County employees but who we employ on a fee-for-service basis, other Health Department

providers who would be impacted by that? Because I felt it was really important for us to know that before moving ahead on this.

COMMISSIONER BRADLEY:

There are a bunch of cuts that were proposed there. If you just look at the 456, the fee for service. Very likely, there will be an individual provider who we wouldn't be able to contract for as such as we would want with that cut. But as long as we can access 456 money elsewhere in our department budget, our feelings is that we'll be okay. That there's enough money in certain places. So for the 456, I think we're okay.

LEG. POSTAL:

How about equipment, supplies?

COMMISSIONER BRADLEY:

Equipment is probably going to be the place where we're going to hurt the most. And this is non-capital equipment.

LEG. POSTAL:

Can you be specific about what kind other things?

COMMISSIONER BRADLEY:

Just run of the mill things. It could be desks, it could be tables, it could be stuff that is not eligible for capital. I mean, 25% was a large cost. So that -- and not the 456, but I think the equipment is the place that we're going to be affected. We're going to have to put off purchasing things that we would have felt like we needed.

LEG. POSTAL:

The other question I had is something that didn't come up in the Finance Committee. For a few years now, the County has participated in a Program of Education and Outreach with regard to diabetes with Cornell Cooperative Extension. I know that program intimately for -- because I think for at least two years, the County in-kind contribution was the contribution of space in my district office. So I watched the program work, and I was very aware of how important it was. And particularly because my district has a very large African American and Native American community. And the African American and Native American populations are at particular risk for diabetes. So it was extremely important.

Now, I was contacted because the funding for this comes from the State, or most of it comes from the State. And as we all know the New York State budget has not been adopted, and the likelihood is that it may even be a period of a month or two months before -- or even three months -- I hope not -- before that New York State budget is adopted. The problem is that the Cornell Cooperative Extension is unable to continue the program and has to have a hiatus of two to three months or however long it takes for New York State to adopt a budget before it can resume the program. I was contacted by people at Martin Luther King Health Center in Wyandanch because they're particularly concerned

about this.

Again, having a very large African American, Native American population served by the center, they've had an enormous number of

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people sign up for the Cornell Cooperative Diabetes Program. And they're very concerned that -- just like we were talking about with patients at the Bay Shore Health Center -- that when there's an interruption in service, sometimes people don't continue the care that they're -- that they should be getting. So it becomes an obstacle. So what I was wondering, and I know you probably can not answer this at all and Ken Weiss is not here, but I'm asking if you can communicate with him. Would it be possible for the County to -- knowing this money is coming when the State budget passes, up front the money to Cornell to enable them to continue the Diabetes Program without interruption, and in what contract we would enter into with them, it would be clear that we would be reimbursed when the State -- by Cornell Cooperative -- when the State budget is approved?

COMMISSIONER BRADLEY:
Okay. I'll follow through on that.

LEG. POSTAL:
Thank you.

CHAIRPERSON FIELDS:
Anyone else. So they we'll begin the agenda.

TABLED RESOLUTIONS

IR 1135 Amending the 2001 Operating Budget and appropriating funds to implement Osteoporosis Testing Program in Suffolk County. (Postal)

LEG. POSTAL:
Motion to table.

CHAIRPERSON FIELDS:
Motion to table. Seconded by Legislator Foley. All in favor?
Opposed? Tabled. TABLED (VOTE: 4-0-0-0)

IR 1353 (P) Authorizing Estee Lauder Breast Cancer Awareness Program at County buildings. (Alden)

CHAIRPERSON FIELDS:
I'm going to make a motion to table because I still do not see a fiscal impact statement. I'm going to make a motion to table.

LEG. POSTAL:

I'll second.

CHAIRPERSON FIELDS:

Okay. All in favor? Opposed? Tabled. TABLED (VOTE: 4-0-0-0)

IR 1410 (P) Establishing County website page for food service establishment violations.

LEG. POSTAL:

I would make a motion to approve. I'm --

LEG. FOLEY:

Second for the purpose of discussion.

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CHAIRPERSON FIELDS:

The sponsor of the bill has asked that we discharge this without recommendation.

LEG. POSTAL:

Okay. I will change my motion to motion to discharge without recommendation.

MR. SABATINO:

Just to add to the record, Madam Chair, Legislator Bishop, who is the sponsor of the bill, saw me last night. He has another memo from the Health Department with some suggested difficulties, which -- I drafted the language last night to address those concerns. I think that it will square it away, but it won't be finished until later today because my secretary's still typing it. So Legislator Bishop did ask me to respond to them and to try to address the concerns. It was an eleven page memo. I read it last night, and I drafted new language, but in fairness, the language is not yet -- it's completed in the sense that I drafted it, but it's not before you so that would be the basis perhaps for just discharging. But understanding that on the floor you have to reconcile the language with what the Health Department wants.

LEG. POSTAL:

Madam care. Just, again, I would change my motion to a motion to discharge. And I just wanted to, in the discussion, say that I had received the previous corrected copy of this bill. I thought that there was some valid concerns in terms expressed by the Department of Health Services in terms of listing all instances of noncompliance equally on this website so that there might be instances of noncompliance, which had no real relationship to health and safety, but were just really kind of paperwork delays or whatever and that has been changed. And I think that there's, if I remember correctly, the

bill now requires that people who are non -- who are operators who are in noncompliance have to be in noncompliance, I think, three times or -- there is some kind of repeat offense requirement in there. So I think it gives me a much higher comfort level in terms of avoiding stigmatizing a business person for something very minor and inadvertent.

CHAIRPERSON FIELDS:

Okay. So we have a motion to discharge without recommendation, and a second. All in favor? Opposed? Discharged without recommendation.
DISCHARGED WITHOUT RECOMMENDATION (VOTE: 4-0-0-0)

INTRODUCTORY RESOLUTIONS

IR 1426 (P) To establish policy for securing Health Department grants. (Fields)

CHAIRPERSON FIELDS:

I'm going to make a motion to approve.

LEG. FOLEY:

Second.

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CHAIRPERSON FIELDS:

All in favor? Opposed? Approved. APPROVED (VOTE: 4-0-0-0)

IR 1484 (P) Adopting Local Law No. -2001, a local law to expand regulation of dangerous dogs. (Crecca)

LEG. POSTAL:

Do we need --

MR. SABATINO:

Public Hearing.

LEG. POSTAL:

-- a public hearing? Motion to table pending a public hearing.

CHAIRPERSON FIELDS:

Second. All in favor? Opposed? Tabled. TABLED (VOTE: 4-0-0-0)

INTRODUCTORY SENSE RESOLUTIONS

Sense 38-2001 (P) Memorializing resolution requesting State of New York to exempt organic landscapers not using chemicals from State-wide Pesticide Neighbor Notification Law.

LEG. POSTAL:

Motion to approve.

CHAIRPERSON FIELDS:

Seconded by the Chair. All in favor? Opposed? Approved.

APPROVED (VOTE: 4-0-0-0)

Sense 39-2001 (P) Memorializing resolution requesting State of New York to provide state aid for non-toxic mosquito vector breeding measures.

CHAIRPERSON FIELDS:

Motion to approve.

LEG. FOLEY:

Second.

CHAIRPERSON FIELDS:

All in favor? Opposed? Approved. APPROVED (VOTE: 4-0-0-0)

This must be a record. It's only 11:12, and we're ended the meeting. I mean, ever, ever since I've been Chair.

LEG. FOLEY:

We can have a discussion about the Health Care impacts of James Jeffords making his switch this morning.

(*The meeting was adjourned at 11:13 A.M.*)